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Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-5844

STANISLAUS ROBERTS

PETITIONER

v.

STATE OF LOUISIANA

RESPONDENT

**ON WRIT OF CERTIORARI TO THE
SUPREME COURT OF LOUISIANA**

BRIEF FOR RESPONDENT

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OPINION BELOW

The Louisiana Supreme Court affirmed the conviction of Stanislaus Roberts on September 5, 1975 and that opinion was reported at 319 So. 2d 317 (1975). The defendant, Stanislaus Roberts was sentenced to death by the Judge of the 14th Judicial District Court on September 30, 1974. This sentencing is unreported. The defendant was tried for First Degree Murder beginning September 16, 1974, and was found guilty by unanimous jury verdict on September 19, 1974. This trial and the subsequent verdict is unreported. The defendant was indicted by the Grand Jury of Calcasieu Parish, Louisiana on May 23, 1974, with the crime of First Degree Murder of Richard G. Lowe, while engaged in the Armed Robbery of Richard G. Lowe. This indictment is also unreported.

The items which are shown above as unreported are contained in the appendix which has been filed with this Honorable Court.

STATEMENT OF THE CASE

The defendant in this case is Stanislaus (Toney) Roberts, 26 year old black male, address unknown. He was indicted for the First Degree Murder of Richard G. Lowe, a 61 year old one armed white male residing at 1323 18th Street, Lake Charles, Louisiana.

The deceased Richard G. Lowe was the night attendant at Pat's Texaco Service Station, 1208 Beldon Street, Lake Charles, Louisiana, which is a service station located adjacent to Interstate I-10, in Calcasieu Parish, Louisiana. On the morning of August 18, 1973, the deceased was working as night attendant at the above station when the defendant, Stanislaus Roberts and Calvin Arceneaux arrived at the station with the intent to rob the attendant. They went into the station through the wash stalls which were located to the west of the office. There was a gun located in a desk in the front office which was taken out of the drawer and given to the defendant, Stanislaus Roberts.

The deceased who had been out front of the service station returned to the office and the defendant caught him by the collar and pushed him into the back room. He was then hit by the defendant and then Calvin Arceneaux returned to the front of the station to service a car which had pulled in at that point. Calvin Arceneaux heard four shots from the office of the station and when he returned to the back room of the station the deceased was lying on the floor and was bleeding from the head area. The assailants then left the station in different directions.

The defendant, Stanislaus Roberts later that morning went to another witnesses house and told him he had killed the old man.

The Police Department later located the weapon which had been used to kill the deceased through a John Stallworth, the owner of a cafe and beer parlor. They were then able to trace the weapon back to the defendant, Stanislaus Roberts.

The defendant in this matter was traced to the murder weapon and also was witnessed at the scene of the crime by Calvin Arceneaux. It was also determined by other witnesses that he had made plans to rob this station at a period shortly prior to the murder actually taking place. It was also established that he intended to kill the deceased, when he told Calvin Arceneaux that he had never killed a white dude before and that he always wanted to kill a white dude.¹

The defendant subsequently was indicted by the Grand Jury of Calcasieu Parish, Louisiana, was arraigned and entered a plea of Not Guilty. His trial was set as shown above and he was found guilty of First Degree Murder by a

¹Appendix, pg. 190. Q. What did you do with it?

A. Tony asked for it.

Q. How did he ask you?

A. He was kind of mad when I had it. He just said he wanted it because he had never killed a white dude before, and he always wanted to kill a white dude.

unanimous verdict of twelve jurors.² He was subsequently sentenced to the mandatory death penalty by the Honorable Earl E. Veron, Judge, 14th Judicial District Court, on September 30, 1974.

QUESTIONS PRESENTED

Whether the law of Louisiana providing for the mandatory death penalty under the First Degree Murder Statute, violates the 8th or 14th Amendment to the Constitution of the United States and the decision of this Honorable Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

I. UNITED STATES CONSTITUTION

A. 8th Amendment:

Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted.

B. 14th Amendment:

Section One:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property,

²Appendix, pg. A-40. All twelve of you must agree to any verdict that is rendered in this case. Until all twelve of you do agree on the verdict, the Court cannot accept the same.

Appendix, pg. A-42. Responsive verdicts.

Appendix, pg. 222 Trial transcript of jurors verdict.

without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

II. CONSTITUTION OF THE STATE OF LOUISIANA

A. Art. 1, Sec. 15: Initiation of Prosecution

Prosecution of a felony shall be initiated by indictment or information, but no person shall be held to answer for a capital crime or a crime punishable by life imprisonment except on indictment by a grand jury. No person shall be twice placed in jeopardy for the same offense, except on his application for a new trial, when a mistrial is declared, or when a motion in arrest of judgment is sustained.

B. Art. 1, Sec. 16: Right to a Fair Trial

Every person charged with a crime is presumed innocent until proven guilty and is entitled to a speedy, public and impartial trial in the parish where the offense or an element of the offense occurred, unless venue is changed in accordance with the law. No person shall be compelled to give evidence against himself. An accused is entitled to confront and cross-examine the witnesses against him, to compel the attendance of witnesses, to present a defense, and to testify in his own behalf.

C. Art. 1, Sec. 17: Jury Trial in Criminal Cases

A criminal case in which the punishment may be capital shall be tried before a jury of twelve persons, all of whom must concur to render a verdict. A case in which the punishment is necessarily confinement at hard labor shall be tried before a jury of twelve persons, ten of whom must concur to render a verdict. A case in which the punishment may be confinement at hard labor or confinement without

hard labor for more than six months shall be tried before a jury of six persons, five of whom must concur to render a verdict. The accused shall have a right to full voir dire examination of prospective jurors and to challenge jurors peremptorily. The number of challenges shall be fixed by law. Except in capital cases, a defendant may knowingly and intelligently waive his right to a trial by jury.

D. Art. 1, Sec. 20: Right to Humane Treatment

No law shall subject a person to euthanasia, to torture, or to cruel, excessive, or unusual punishment. Full rights of citizenship shall be restored upon termination of state and federal supervision following conviction for any offense.

E. Art. 4, Sec. 5-E: Pardon, Commutation, Reprieve, and Remission: Board of Pardons

(1) The governor may grant reprieves to persons convicted of offenses against the state and, upon recommendation of the Board of Pardons, may commute sentences, pardon those convicted of offenses against the state, and remit fines and forfeitures imposed for such offenses. However, a first offender never previously convicted of a felony shall be pardoned automatically upon completion of his sentence, without a recommendation of the Board of Pardons and without action by the Governor.

(2) The Board of Pardons shall consist of five electors appointed by the Governor, subject to confirmation by the Senate. Each member of the board shall serve a term concurrent with that of the governor appointing him.

III. LOUISIANA STATUTORY PROVISIONS

A. LSA C. Cr. P. Art. 61: District Attorney: Powers and Duties

Subject to the supervision of the Attorney General, as provided in Art. 62, the District Attorney has entire charge and control of every criminal prosecution instituted or pending in his district, and determines whom, when, and how he shall prosecute.

B. LSA C. Cr. P. Art. 443: When Indictment to be Found

The Grand Jury shall find an indictment, charging the defendant with the commission of an offense, when, in its judgment, the evidence considered by it, if unexplained and uncontradicted, warrants a conviction.

C. LSA C. Cr. P. Art. 444: Action by Grand Jury

(1) A grand jury shall have the power to act, concerning a matter, only in one of the following ways:

a. By returning a true bill.

b. By returning not a true bill; or

c. By premitting entirely the matter investigated. The Grand Jury is an accusatory body and not a censor of public morals. It shall make no report or recommendation, other than to report its actions as aforesaid.

(2) At least nine members of the Grand Jury must concur in returning "*a true bill*" or "*not a true bill*". A matter may be premitted by a vote of at least nine members of the Grand Jury, or as a consequence of the failure of nine of the Grand Jury members to agree on a finding.

(3) A Grand Jury may make such reports or requests

as are authorized by law.

**D. LSA C. Cr. P. Art. 782: Number of Jurors
Composing Jury:
Number which
must concur**

(1) Cases in which punishment may be capital shall be tried by a jury of twelve jurors, all of whom must concur to render a verdict. Cases in which the punishment is necessarily confinement at hard labor shall be tried by a jury composed of twelve jurors, ten of whom must concur to render a verdict. Cases in which the punishment may be confinement at hard labor, shall be tried by a jury composed of six jurors, five of whom must concur to render a verdict.

(2) Trial by jury may be knowingly and intelligently waived by the defendant except in capital cases.

(3) A defendant charged with the commission of an offense alleged to have been committed prior to midnight December 31, 1974, shall, except as hereinafter provided, be tried in accordance with the jury provisions applicable at the time of the commission of the offense. Prior to the commencement of trial in such cases, court shall advise the defendant that he may elect to be tried under the jury provisions of the Louisiana Constitution of 1974, and failure of the defendant to so elect prior to the commencement of the trial constitutes a waiver of his right to be tried under the jury provisions of the Louisiana Constitution of 1974.

**E. LSA C. Cr. P. Art. 598: Effect of Verdict
of Lesser Offense**

When a person is found guilty of a lesser degree of the offense charged, the verdict or judgment of the court is an acquittal of all greater offenses charged

in the indictment and the defendant cannot thereafter be tried for those offenses in a new trial.

**F. LSA C. Cr. P. Art. 801: Time for Charge:
When Written
Charge Required**

The court shall charge the jury after the presentation of all evidence and arguments. The court shall reduce its charge to writing if it is requested to do so by either a defendant or the state prior to the swearing of the first witness at the trial on the merits. The court's written charge shall be read to the jury. The court shall deliver a copy thereof to the defendant and to the state prior to reading it to the jury.

**G. LSA C. Cr. P. Art. 803: Same: Charge as to
Included Minor
Offenses and Plea
of Insanity**

When a court in an indictment sets out an offense which includes other offenses of which the accused could be found guilty under the provisions of Article 814 and 815, the court shall charge the jury as to the law applicable to each offense.

When a defendant has specifically pleaded insanity in accordance with Article 552, the court shall charge the jury with respect to the law applicable thereto.

**H. LSA C. Cr. P. Art. 804: Same: Charge as to
Presumption of
Innocence,
Reasonable Doubt, and
Several Grades
of Offense**

(1) In all cases the court shall charge the jury that:

(a) A person accused of a crime is presumed by law to be innocent until each element of the crime, necessary to constitute his guilt, is proven beyond a reasonable doubt.

(b) It is the duty of the jury, in considering the evidence and in applying to that evidence the law as given by the court, to give the defendant the benefit of every reasonable doubt arising out of the evidence or out of the lack of evidence in the cases; and

(c) It is the duty of the jury if not convinced of the guilt of a defendant beyond a reasonable doubt, to find him not guilty.

The court may, but is not required to, define "*the presumption of innocence*" or "*reasonable doubt*" or give any other or further charge upon the same than that contained in this article.

(2) When there are several grades of an offense contained in a single count, the court shall charge the jury as to each grade of which the defendant could be found guilty. The court shall in that case also charge the jury that if it has reasonable doubt as to any or all grades of the offense charged it shall find the defendant not guilty of that grade, or all grades of the offense, as the case may be.

**I. LSA C. Cr. P. Art. 809: Judge to Give Jury
Written List of
Responsive Verdicts**

After charging the jury, the judge shall give the jury a written list of the verdicts responsive to each offense charged, with each separately stated. The list shall be taken into the jury room for use by the jury during its deliberation.

**J. LSA C. Cr. P. Art. 817: Qualifying Verdict in
Capital Cases and
Non Capital Cases**

Any qualification of or addition to a verdict of guilty, beyond a specification of the offense as to which the verdict is found, is without effect upon the finding.

K. LRS 15:567: Warrant of Governor

No person sentenced to death shall be executed until a certified copy of the indictment, verdict and sentence shall have been sent to the Governor, and a warrant shall have been issued by him, under the seal of the State, directed to the warden of the Louisiana State Penitentiary at Angola, commanding the warden to cause the execution to be done on the person so condemned in all things according to the judgment against him, and upon the date named in said warrant.

L. LRS 15:568: Execution of Death Sentence

The director of the Department of Corrections, or a competent person selected by him, shall execute the offender in conformity with the death warrant issued in the case. Until the time of his execution, the Department of Corrections shall incarcerate the offender in a manner affording maximum protection to the general public, the employees of the department, and the security of the institution.

M. LRS 15:569: Place of Execution

Every sentence of death imposed in this state shall be by electrocution; that is, causing to pass through the body of the person convicted, a current of electricity of sufficient intensity to cause death, and the application and continuances of such current through the body of the person convicted until such person is dead. Every sentence of death imposed in

this state shall be executed at the Louisiana State Penitentiary at Angola. Every execution shall be made in a room entirely cut off from view of all except those permitted by law to be in said room.

N. LRS 15:570: Witnesses Present at Execution

Every execution of the death sentence shall take place in the presence of the warden of the Louisiana State Penitentiary at Angola, or a competent person selected by him, the coroner of the parish of West Feliciana, or his deputy, and a physician summoned by the warden of the Louisiana State Penitentiary at Angola, the operator of the electric chair who shall be a competent electrician who shall have not been previously convicted of a felony, a priest or minister of the gospel, if the convict so requests it, and not less than five nor more than seven witnesses, all citizens of the State of Louisiana; no person under the age of twenty-one years shall be allowed within said execution room during the time of execution.

O. LRS 14:30 (Source: Acts 1972, No. 43, Sec. 1, Art. 30) Murder

Murder is the killing of a human being.

(1) When the offender has a specific intent to kill or to inflict great bodily harm; or

(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated rape, armed robbery, or simple robbery, even though he has no intent to kill

Whoever commits the crime of murder shall be punished by death.

**P. LSA C. Cr. P. Art. 814 (Formerly LRS 15:386)
Responsive Verdicts**

The only responsive verdicts which may be rendered where the indictment charges the following offenses are:

Murder:

Guilty

Guilty without capital punishment

Guilty of Manslaughter

Not Guilty

Q. LRS 14:30 First Degree Murder

First Degree Murder is the killing of a human being.

(1) When the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated rape, aggravated burglary, or armed robbery; or As amended Acts. 1875, No. 327. Sec. 1.

(2) When the offender has a specific intent to kill, or to inflict great bodily harm upon, a fireman or peace officer who was engaged in the performance of his lawful duties; or

(3) Where the offender has a specific intent to kill or to inflict great bodily harm and has previously been convicted of an unrelated murder or is serving a life sentence; or

(4) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person.

(5) When the offender has specific intent to commit murder and has been offered or has received anything of value for committing the murder.

For the purposes of Paragraph 2 herein, the term peace officer shall be defined and include any constable, sheriff, deputy sheriff, local or state policeman, game warden, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, district attorney, assistant district attorney or district attorneys investigator.

Whoever commits the crime of First Degree Murder shall be punished by death.

As amended Acts 1973, No. 109, Sec. 1

R. LRS 14:30.1 (Acts 1975, No. 380, Sec. 1)
Second Degree Murder

Second Degree Murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm, or

(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated escape, armed robbery, or simple robbery, even though he has no intent to kill.

Whoever commits the crime of Second Degree Murder shall be imprisoned at hard labor for life and shall not be eligible for parole, probation, or suspension of sentence for a period of forty years.

S. LSA C. Cr. P. Art. 814 (As amended)
Responsive Verdicts

The only responsive verdicts which may be rendered where the indictment charges the following offenses are:

(1) First Degree Murder:

Guilty

Guilty of Second Degree Murder

Guilty of Manslaughter

Not Guilty

(2) Second Degree Murder:

Guilty

Guilty of Manslaughter

Not Guilty

ARGUMENT

This Honorable Court in the decision of Furman v. Georgia held that the death penalty while severe was not unconstitutional per se. However, the court did state that such a severe punishment should not be left to the unfettered control of the jury or judge. The court stated that the jury should have guidelines to determine the guilt of a person that is on trial in a capital case. It also stated that the determination of whether or not the penalty is to be applied or not should not be determined in an arbitrary manner by judge or jury.

The Law of Louisiana prior to 1972 read as follows:

Murder is the killing of a human being:

(1) When the offender has a specific intent to kill to inflict great bodily harm, or

(2) When the offender is engaged in the perpetration or attempted perpetration of aggravated arson, aggravated burglary, aggravated kidnapping, aggravated rape, armed robbery or simple robbery, even though he has no intent to kill.

The only responsive verdicts which may be rendered where the indictments charges the following offences are:

Murder:

Guilty

Guilty without capital punishment

Guilty of Manslaughter
Not Guilty

The court can readily see that the murder statute and the responsive verdict statute in Louisiana prior to the Furman decision was too broad and allowed the jury the discretion of giving the defendant the death penalty or life imprisonment as then defined. It is felt by respondent that the laws of Louisiana regarding the death penalty prior to 1972 did not comply with the decision which was rendered in the Furman case.

The Louisiana legislature in 1973 revised the laws pertaining to murder and the application of the death penalty. The legislature amended the murder statute to degrees of murder. The First Degree Murder statute which carries with it the death penalty, reads as follows:

First Degree Murder:

First Degree Murder is the killing of a human being:

(1) When the offender has a specific intent to kill or to inflict great bodily harm and is engaged in the perpetration or attempted perpetration of aggravated kidnapping, aggravated rape, aggravated burglary, or armed robbery; or

As amended Acts 1975, No. 327, Sec. 1

(2) When the offender has a specific intent to kill, or to inflict great bodily harm upon, a fireman or a peace officer who was engaged in the performance of his lawful duties; or

(3) Where the offender has the specific intent to kill or to inflict great bodily harm and has previously been convicted of an unrelated murder or is serving a life sentence; or

(4) When the offender has a specific intent to kill or to inflict great bodily harm upon more than one person.

(5) When the offender has a specific intent to commit

murder and has been offered or has received anything of value for committing the murder.

For the purposes of paragraph (2) herein, the term peace officer shall be defined and include any constable, sheriff, deputy sheriff, local or state policeman, game warden, federal law enforcement officer, jail or prison guard, parole officer, probation officer, judge, district attorney, assistant district attorney or district attorneys' investigator.

Whoever commits the crime of First Degree Murder shall be punished by death.

As amended Acts. 1973, No. 109, Sec. 1

The legislature further amended Article 814 of the Louisiana Code of Criminal Procedure to read as follows:

The only responsive verdicts which may be rendered where the indictment charges the following offenses are:

(1) First Degree Murder:

Guilty
Guilty of Second Degree Murder
Guilty of Manslaughter
Not Guilty

(3) Second Degree Murder:

Guilty
Guilty of Manslaughter
Not Guilty

The legislature also amended Art. 817 of the Louisiana Code of Criminal Procedure to avoid the qualifying of any verdict in capital or non capital cases which is as follows:

Any qualification of or addition to a verdict of guilty, beyond a specification of the offense as to which the verdict is found, is without effect upon the finding.

The above legislation was passed to comply with the United States Constitution and the decision of this court. The statute in First Degree Murder as set out above contains certain elements which the jury has to find from the evidence presented to them before they can return a guilty verdict. The statute sets out these guidelines so that the jury will not have any discretion in reaching their verdict.³ It is felt that the statute complies with the requirements set out by this Honorable Court in the Furman decision.

The judge nor the jury have any discretion in the application of the death penalty if a verdict of guilty as charged is returned. The court will note that the statute makes it mandatory that the judge sentence the defendant to death whenever a unanimous verdict of guilty as charged is returned. The court will also note that the Louisiana Code of Criminal Procedure Article 817 was amended to eliminate the qualifying of any verdict by the jury or the judge, thus leaving no discretion in the sentencing once the verdict has been returned.⁴

The legislature after receiving the recommendation of a committee which was appointed by the Governor placed the more serious types of murder under the First Degree Murder statute, in other words, those murders that occurred after the action was initiated by the defendant himself. The less heinous types of murders was placed under the Second Degree Murder statute and carried with it a possible penalty of life imprisonment. This takes the death penalty in Louisiana out of the realm of those type murders that may result from arguments or other types of fracas, but is selective as to those persons that are in the perpetration of aggravated felonies; killing for hire, killing law enforcement officers in performance of their duties, or with the intent of killing more than one person. Those are the only defendants

³Page 13 of Respondent's brief.

⁴Trial brief page 13, First Degree Murder.

that are subject to receive the death penalty if they be found guilty by a unanimous jury of twelve.⁵

The legislature after long discussions with the committee decided to leave the responsive verdicts to a First Degree Murder charge with the exception of guilty without capital punishment. It was felt that in those cases where the State failed to prove beyond a reasonable doubt all of the elements of First Degree Murder, but did prove beyond a reasonable doubt all of the elements of Second Degree Murder, the defendant would go free. Therefore, the legislature left the jury with the possibility of returning a verdict of Second Degree Murder or Manslaughter if that were the crimes that were proved. This does not in any way give the jury any latitude or discretion in returning the verdict that is proven beyond a reasonable doubt by the State. The juror is a sworn official of the court and is instructed by the Court, as was done in this case,⁶ that if the State proves all of the elements of First Degree Murder beyond a reasonable doubt then it is their sworn duty to return a verdict of guilty as charged. The jury is bound by the law as given it by the Court and would have no latitude to return any verdict other than the one that is proven.⁷

There has been discussion that the jury would fail to follow the instruction of the court, however, there is no way to write a law to force a person to live up to his oath and there does not appear to the respondent any real basis on which to say that the juries of Louisiana and the United States do not conduct themselves in a fair and impartial manner and comply as best their ability allows with the law as given them

⁵Trial brief page 5, Art. 1, Sec. 17, Louisiana State Constitution.

⁶Appendix, pg. A-39 If you are convinced beyond a reasonable doubt that the defendant is guilty of the offense charged, the form of your verdict should be:
"We, the jury, find the defendant guilty as charged."

⁷Appendix, pg. A-39 Accordingly, I will now set forth the proper form of each verdict that may be rendered reminding you that only one verdict shall be rendered.

by the Court. It has certainly been the experience of respondent that the jurors in Calcasieu Parish have accepted their responsibility in a serious manner and have returned the verdicts that are proven to them by the facts presented.

The failure of a jury to follow the instructions of the court and to apply the law of the State where it is sitting applies to all criminal cases. If the citizens of the State of Louisiana and the United States cannot be trusted to render only those verdicts which have been proven then the jury system is suspect. We would therefore then have to amend our entire judicial system to eliminate juries and provide for some type system other than that which has been used for these many years. It is not felt that the Court in the Furman case intended such a drastic change, nor is it felt that such a change is necessary.

The Louisiana Supreme Court has considered the 1973 legislation regarding the death penalty. The court in *State v. Hill*, 297 So. 2d 660, the court through Chief Justice Sanders stated:

(1) The death penalty for murder, when the perpetrator has been intent to kill or inflict great bodily harm on more than one person, is neither barbarous nor disproportionate to the offense. See *State v. Selman*, supra; *State v. Crook*, 253, La. 961, 221 S. 2d 473, (1969); 21 Am Jur. 2d, Criminal Law, Dec. 613, p. 563. In fact, the Due Process Clause of the United States Constitution sanctions the death penalty when it is imposed with due process of law.

(2) We conclude, therefore, that capital punishment per se, is not constitutionally proscribed.

(3) As provided in the statute, the death penalty is mandatory for First Degree Murder. Article 817 of the Louisiana Code of Criminal Procedure, as amended by Act. 125 of 1973, prohibits a qualification of the guilty verdict. If the defendant is found guilty as charged, the trial judge must impose the death penalty. The penalty

cannot be applied as a discriminatory manner. See *Furman v. Georgia*, supra; *State v. Holmes*, 263 La. 685, 269 So. 2d 207 (1972). It is true that Article 814, as amended by Act. 126 of 1973, lists as responsive verdicts second degree murder, carrying a sentence of life imprisonment, and manslaughter, carrying a sentence of imprisonment up to 21 years. See LSA R.S. 14:30.1; LSA R.S. 14:31. The use of these lesser verdicts however, is contingent upon the jury finding insufficient evidence to convict the defendant of First Degree Murder, with which he is charged. The jury is concerned only with guilt. It has no sentencing function. LSA La. Const. Art. 19, Sec. 9 (1921); LSA C. Cr. P. Art. 802.

The Louisiana Supreme Court also considered the current Louisiana legislation in light of the Furman case in *State v. Selman*, 300 So. 2d. 467.

Prior to these amendments, our law provided that in a capital case, the jury could qualify its verdict of guilty with the additional words "*without capital punishment*." in which case the punishment would have been imprisonment at hard labor for life rather than death. This clearly left to the uncontrolled discretion of the jury the determination whether the defendant committing a particular capital crime should die or be imprisoned. Act. 125 of 1973, amending Article 817 of our Code of Criminal Procedure, prohibits any qualification to a verdict of guilty. Act. 126 of 1973, amending Article 814 C. Cr. P. removed from responsive verdicts in capital cases: "*guilty without capital punishment*." We feel that the Louisiana legislature, by amending Articles 817 and 814 C. Cr. P., as aforesaid, removed the infirmity which caused the reversal of the convictions in *Furman v. Georgia*.

Finally, we find no substance in the argument that by permitting a jury to render responsive verdicts, there still remains in the jury the uncontrolled discretion to impose

the death penalty. The responsive verdicts for aggravated rape are as follows: guilty, guilty of attempted aggravated rape, guilty of simple rape, not guilty. The reason for this argument lacking merit is that the jury has no discretion to the imposition of the death penalty for aggravated rape. If the jury finds under the facts of the case that the accused is guilty of aggravated rape, the death penalty shall be imposed. On the other hand, if the jury finds under the facts of the case that the accused is either guilty of attempted aggravated rape or simple rape, they will render a verdict of guilty for that particular crime. We must bear in mind that attempted aggravated rape and simple rape are separate and distinct crimes with separate penalty provisions for each. The fact that death is the mandatory penalty for aggravated rape but not the responsive verdicts of attempted aggravated rape and simple rape is of no moment. The sole determining factor as to which penalty will be imposed depends upon the particular crime for which the jury finds the accused guilty, if any. Therefore, we conclude that there is no discretion in the jury for the imposition of the death penalty where the accused is found guilty of aggravated rape.

Hence, the present death penalty in Louisiana for aggravated rape is constitutionally permissible. It does not violate the 8th and 14th Amendments to the United States Constitution.

The District Attorneys of the various parishes or districts of Louisiana have the power to determine whom, when and how they will prosecute, as is shown by Louisiana Code of Criminal Procedure Art. 61.⁸ However, the Louisiana Constitution, Art. 1 Sec. 15,⁹ provides that any capital crime or any crime punishable by life imprisonment can only be

⁸Page 7 of Respondents brief. LSA C. Cr. P. Art. 61: District Attorney: Powers and Duties.

⁹Page 5 of Respondents brief. Art. 1, Sec. 15: Initiation of Prosecution.

initiated by an indictment of a Grand Jury. Therefore, it can readily be seen that a District Attorney cannot prosecute a person for a crime that carries with it the death penalty without first placing his evidence before a Grand Jury and obtaining an indictment. Therefore, the District Attorney of any parish or district of Louisiana cannot act in an arbitrary manner in initiating the prosecution of a capital crime.

It is true that as a safeguard to the citizens of Louisiana and as a barrier between the law enforcement personnel and the citizens, a District Attorney may reduce or Nolle Prosequere any charge. This is a safeguard that is needed and one that is for the benefit of the citizens of Louisiana and the United States. But it must be remembered that the District Attorney's power pertains only to those persons and charges that have not been tried. Once a person has been tried by a jury in a capital case and a unanimous verdict of guilty is returned, the District Attorney has no further power to act. The judge must sentence the man to death and the District Attorney has no further control over the individual, the charge, the verdict, nor the sentence.

The Governor of the State of Louisiana retained the right to reprieve persons who have been convicted of offenses against the State under Art. 4, Sec. 5.E¹⁰ of the Louisiana Constitution of 1974. The Governor may grant a reprieve or commute sentences upon the recommendation of the Board of Pardons. This board consists of five persons appointed by the Governor and confirmed by the Louisiana Senate. It is true that the Governor can override a death penalty but this is only beneficial to the defendant, whoever he may be. It was approved by the citizens of the State of Louisiana by a two-thirds (2/3) vote in November, 1973. It certainly cannot be said that such a provision which is to the defendant's benefit only can be used to nullify a statute which provides for punishment in the case of convicted criminals.

¹⁰Page 6 of respondents brief: Art. 4, Sec. 5-E: Pardon, Commutation, Reprieve, and Remission: Board of Pardons.

The State of Louisiana does not feel that it should take the time of this Honorable Court to again discuss the merits or demerits of capital punishment per se. It is felt that the Justices certainly have discussed this classic question many times and the question has been briefed many times for the Court and was thoroughly discussed by the Justices themselves in *Furman v. Georgia*. This question has been thoroughly briefed and discussed by the United States acting as *Amicus Curiae* in this case and the State of Louisiana adopts the opinion therein.

The State of Louisiana would point out that the citizens of that State through their legislature have approved of the death penalty. This statute was enacted in a special session and required a two-thirds (2/3) vote of the members to be presented. Therefore, it is apparent that the citizens of Louisiana along with approximately 31 other states approve of the death penalty as a serious punishment for the most serious crimes.

CONCLUSION

The Louisiana law pertaining to First Degree Murder and the death penalty which is applicable thereto is not forbidden by the 8th and 14th Amendment of the Constitution of the United States. That the statutes of Louisiana correctly provide guidelines for the judge and jury in the determination of the guilt of defendants, and do not allow arbitrariness in the imposition of the death penalty.

Respectfully submitted,

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